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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/681,351 | 10/07/2003 | Larry L. Hood | 155694-0130 | 8308 |
| 1622 | 7590 | 02/07/2005 | EXAMINER | |
| IRELL & MANELLA LLP 840 NEWPORT CENTER DRIVE SUITE 400 NEWPORT BEACH, CA 92660 | | | GIBSON, ROY DEAN | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3739 | |

DATE MAILED: 02/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) |
|------------------------------|-----------------|----------------|
| | 10/681,351 | HOOD, LARRY L. |
| Examiner | Art Unit | |
| Roy D. Gibson | 3739 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 07 October 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-13 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) Claim(s) 9-13 is/are allowed.
6) Claim(s) 1-3 and 5 is/are rejected.
7) Claim(s) 2-4 and 6-8 is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/07/2003.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "radio test pulses" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim. The examiner suggests claim 5 should depend from claim 4 to correct this.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Koch (4,474,179). Koch discloses an electrical power supply comprising:

inherently an electrode and return pin as at the power supply/HF generator; a circuit that can provide a current to the electrode pin, and an indication of the electrical characteristics of the treated tissue in response to the current flowing through the tissue and the pins, i.e., monitoring the impedance (therefore the voltage) of the

tissue and its time rate of change (dz/dt) and using the results to adjust the initial power and for establishing the optimum time for switching off the HF power (Abstract and col. 2, line 39-col. 3, line 13).

Claims 1-2 are rejected under 35 U.S.C. 102(e) as being anticipated by Shapiro et al. (4,372,315) . Shapiro et al. disclose an electrical power supply comprising: inherently an electrode and return pin as at the power supply/RF generator; a circuit that can provide a current to the electrode pin, and an indication of the electrical characteristics of the treated tissue in response to the current flowing through the tissue and the pins, i.e., an impedance sensing epilator that measures the impedance seen by the probe for the purpose of adjusting the pulse of the RF power applied to the probe (Abstract and col. 3, lines 3-53).

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by Klicek et al. (5,370,645). Klicek et al. disclose an electrical power supply comprising: inherently an electrode and return pin as at the power supply/RF generator; a circuit that can provide a current to the electrode pin, and an indication of the electrical characteristics of the treated tissue in response to the current flowing through the tissue and the pins, i.e., monitoring the impedance (therefore the voltage) of the

tissue and is capable of determining its time rate of change (dz/dt since it has a processor) and using the results to adjust the high voltage power supply in the electrosurgical unit (Abstract and col. 6, line 44-col. 7, line 29).

Allowable Subject Matter

Claims 9-13 are allowed.

Claims 4 and 6-8 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

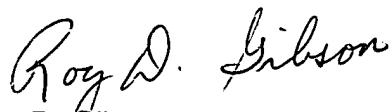
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The examiner suggests that claim 1 is sufficiently broad that a typical ohm-meter would anticipate the claim.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 571-272-4767. The examiner can normally be reached on M-F, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Roy D. Gibson
Primary Examiner
Art Unit 3739

February 3, 2005